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1 2	BEFORE THE FEDERAL ELECTION COMMISSION		
3	3 In the Matter of		
5	5 MUR 7107)	CASE CLOSURE UNDER THE	
6	,	ENFORCEMENT PRIORITY	
7 8	,	SYSTEM	
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1	1 GENERAL COUN	GENERAL COUNSEL'S REPORT	
2	2 Under the Enforcement Priority System, the	Under the Enforcement Priority System, the Commission uses formal scoring criteria as a	
3	3 basis to allocate its resources and decide which matt	basis to allocate its resources and decide which matters to pursue. These criteria include, without	
4	limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into		
5	5 account both the type of activity and the amount in	account both the type of activity and the amount in violation; (2) the apparent impact the alleged	
6	violation may have had on the electoral process; (3) the complexity of the legal issues raised in the		
7	matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as		
8	amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing		
9	relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial		
20	discretion to dismiss cases under certain circumstances and where appropriate, to find no reason to		
21	believe that a violation occurred.		
22	The Office of General Counsel has scored M	IUR 7107 as a low-rated matter and has	
23	determined that it should not be referred to the Alter	determined that it should not be referred to the Alternative Dispute Resolution Office. 1 For the	
24	reasons set forth below, we recommend that the Commission find no reason to believe that Progress		
25	United, and Progress United PAC and Joseph Aiken in his official capacity as treasurer (the		

"PAC")², violated the Act or Commission regulations.

The EPS rating information is as follows: Complaint Filed: July 15, 2016. Response Filed by Progress United PAC: October 28, 2016. Progress United indicated that it would not be filing an additional response, and that the PAC's response represents its views.

The PAC is an independent-expenditure-only political committee that registered with the Commission on May 2, 2016. A search of the Virginia Department of Elections and the New Jersey Election Law Enforcement Commission

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The Complaint alleges that the PAC failed to file 48-hour notices of independent

- 2 expenditures related to web and radio ads, which ran the week of May 9, 2016.³ Compl. at 2. Also,
- 3 the Complaint alleges that the PAC did not include a proper disclaimer on these communications.
- 4 Id. at 2, 3. The Complaint attached a screenshot from the webpage, which features a picture of a
- 5 state assemblyman with the caption "A Bailout for Atlantic City Politicians." Compl. Attach. 1.
- 6 The assemblyman is not a candidate for federal office.
- 7 The PAC argues that at the time of its Response, it had not disseminated any
- 8 communications in connection with any election. 4 Comp. Resp. at 1. The PAC states that it was not
- 9 responsible for any of the activities referred to in the Complaint; instead, a separate social welfare
- organization called Progress United was responsible. The PAC states that Progress United was
- organized under Section 501(c)(4) of the Internal Revenue Code. 5 Id. at 1-2. The PAC also states
- that the activities referred to in the Complaint were issue advertisements related solely to non-federal
- issues in New Jersey, and did not refer to any federal candidate or any election. *Id.* at 2.
- In relevant part, an independent expenditure is an expenditure advocating for the election or ...
- defeat of a clearly identified candidate for federal office. If an entity makes independent

databases found no results for any entities named "Progress United." http://cfreports.sbe.virginia.gov/, http://www.elec.state.nj.us/publicinformation/searchdatabase.htm.

The Complaint includes an attachment of a web advertisement, but we were not able to locate the alleged radio advertisements, which allegedly supported Progress United's position.

This statement appears to be accurate. See Progress United PAC July Quarterly Report, filed July 6, 2016, Progress United PAC October Quarterly Report, filed October 3, 2016, and Progress United PAC Post-General Report, filed November 30, 2016. However, the PAC appears to have begun disseminating communications the day after filing its Response. See Progress United PAC 24-Hour Reports of Independent Expenditures, dated October 29, 2016, October 31, 2016 (2), November 2, 2016, November 3, 2016, reporting independent expenditures made in opposition of Arthur L. Halvorson, a candidate for U.S. House of Representatives in Pennsylvania's Ninth District.

The Response includes a copy of the Internal Revenue Service Form 8976 that Progress United filed on August 5, 2016, registering it as a social welfare organization. We note that although Progress United and the PAC are two different entities, Progress United's address registered with the I.R.S. is the same address as the PAC's treasurer, Joseph Aiken, as provided in the PAC's Statement of Organization.

^{6 52} U.S.C. § 30101(2), (17)(A).

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as to all respondents.

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- expenditures aggregating \$10,000 or more with respect to a given election at any time up to and
- 2 including the 20th day before the date of an election, the entity must file a 48-Hour Report
- 3 disclosing those expenditures. Whenever a political committee makes a disbursement for a
- 4 communication through a mailing or general public political advertising, the Act and Commission
- 5 regulations require that the communication shall clearly state that it has been paid for by the
- 6 committee. 8 See also 11 C.F.R. § 110.11(a)(1), (b)(1), (c)(1).

We recommend the Commission find no reason to believe as to the PAC because it does not appear to be responsible for the activity mentioned in the Complaint. We also recommend that the Commission find no reason to believe as to Progress United. There is no available information that Progress United's communications mentioned a federal candidate or that Progress United qualifies as a political committee. Therefore, there was no requirement under the Act that Progress United file an independent expenditure report or include a disclaimer on its advertisements. We also recommend that the Commission approve the attached Factual and Legal Analyses, and close the file

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⁷ 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 109.10(c). The entity must file additional reports within 48 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$10,000. *Id*.

⁵² U.S.C. § 30120(a)(1). See also 11 C.F.R. § 110.11(a)(1), (b)(1). Additionally, websites of political committees available to the general public must include a disclaimer clearly stating who paid for the communication. 11 C.F.R. § 110.11(a)(1).

⁵² U.S.C. § 30101(2), (4). As the website does not expressly advocate for the election or defeat of a clearly identified federal candidate, Progress United was not required to file an independent expenditure report with the Commission or attach a disclaimer to its advertisement. See 11 C.F.R. § 110.11(a)(2).

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RECOMMENDATIONS 1. Find no reason to believe that Progress United, Progress United PAC and Joseph Aiken, in his official capacity as treasurer, violated the Act and Commission regulations; 2. Approve the attached Factual and Legal Analyses and the appropriate letters; and 3. Close the file as to all respondents. Lisa J. Stevenson General Counsel Kathleen M. Guith Associate General Counsel 4.19.17 BY: Date Stephen Gura Deputy Associate General Counsel Jeff S. Jordan Assistant General Counsel Donald E. Campbell Attorney Attachment: Factual and Legal Analyses